

CALIFORNIA ACUPUNCTURE BOARD

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Governor

State of California
Department of Consumer Affairs
Gray Davis,



(approved July 14, 2003)

ACUPUNCTURE BOARD MEETING MINUTES MARCH 12-13, 2003 Contractors State License Board Sacramento, CA 95827

**Wednesday, March 12, 2003
8:30 am – 5:00 pm**

MEMEBERS PRESENT

Pei Li Zhong-Fong, L.Ac., Chair
Shari Asplund, Vice Chair
Joan C. Chang, L.Ac.
Min M. Chang
Justin Tin, D.D.S.

STAFF PRESENT

Marilyn Nielsen, Executive Officer
Don Chang, Legal Counsel
Janelle Wedge, Administrative Coordinator
Nancy Molinar, Education Coordinator
Christie Dohring, Examination Coordinator
Kerry Hartsough, Enforcement Coordinator
Helen Gathercole, Administrative Technician

MEMBERS ABSENT

Michael Eng

GUEST LIST ON FILE

1. Call to Order and Establishment of a Quorum (P.Zhong-Fong, Chair)

Pei Li Zhong-Fong called the Acupuncture Board meeting to order at approximately 8:35 a.m., roll was taken and a quorum established.

2. Chair's Report – Pei Li Zhong-Fong

Ms. Zhong-Fong introduced Jim Mayer, Executive Director of the Little Hoover Commission and welcomed him to the Board meeting. She reported that the Little Hoover Commission would be conducting a study of four important issues: scope of practice, licensing examination, educational requirements and the school approval process. Ms. Zhong-Fong stated that the Board will have the opportunity at this meeting to discuss the proposal for the new 3,000 hour curriculum mandated by AB 1943 which will be effective January 2005. The Board will continue to study the use of unlicensed acupuncture assistants and recommend ways to improve the frequency and consistency of the Board's auditing and the quality and relevance of the continued education courses. Ms. Zhong-Fong indicated that there has been a significant reduction in the State budget and this has affected the Board. Travel allocation has been reduced by 35 percent and as of the end of January the Board has used 64 percent of the in-state travel budget. She suggests the Board considers rescheduling the Boards remaining meetings in the next fiscal year and asked the Board members and staff to make every effort to control and reduce expenditures. Ms. Zhong-Fong thanked Min Mey Chang for sacrificing her trip to San Francisco for the Acupuncture Day Party. She also congratulated Michael Eng for his recent elected position with the Monterey Park City Council. In closing Ms. Zhong-Fong reported effective this year the quorum has been changed to five Board members and currently there are only six members, so the Board's attendance is very important.

3. Executive Officer's Report – Marilyn Nielsen

Ms. Nielsen reported that in recognition of the National Consumer Protection Week February 2 through 8, 2003, the Board staff participated in the DCA Consumer Fair at the California State University Sacramento on February 3, 2003. The fair targeted students and senior citizens, it featured 16 consumer information workshops and 32 informational tables, of which one was organized and worked by Kerry Hartsough and Robin Saenz. In August the staff will be participating in the CSOMA 2003 Expo North in San Francisco and will be teaching a workshop on enforcement and continuing education in addition to having an informational booth. Due to the Governor's new directives to reduce travel, the staff will not be attending the CSOMA 2003 Expo South, however there is an instructional workshop being offered April 6, 2003 and would encourage a Southern California Board member to attend. Ms. Nielsen informed the members SB 1955 effective 2003 has made attendance at the board member orientations mandatory for all board members. DCA Training Division will be sending a notice of the 2003 dates and locations to all members. Ms. Nielsen indicated the owner of the new office location has accepted the contract proposal and it is projected that the construction will be complete by July or August 2003. DCA is supporting the move and recommends proceeding with it. Ms. Nielsen stated that the Communications & Education Division is the DCA's liaison to the media. The Division has five Public Information Officers that answer press inquiries, help develop media strategies and events, arrange interviews with officials and write press releases for the Departments' Board, Bureaus and Programs. The Division worked with the Board to develop the graphic art for the Board's 2002 Consumer Brochure and Kevin Flanagan, the Board's Information Officer will be attending this meeting to observe and meet the Board members. Ms. Nielsen reported that she and Ms. Wedge attended a Media Training Workshop sponsored by the Division, which included a mock TV interview with Mike Luery, former anchor for Sacramento TV Channel 3 and currently the Deputy Director of the Communication & Education Division. In conclusion, Ms. Nielsen indicated that the Department forwarded to the Board's office a copy of a Legislative Bill AB 621. This bill authorizes various regulatory boards to issue a special license to qualifying retirees allowing them to provide health services to indigent patients in medically under-served or critical-need population areas in the state. The bill also exempts them from liability for professional negligence or malpractice. Regulatory boards included in this bill are physicians/surgeons, dentist, podiatrist, registered nurses, chiropractors and acupuncturists.

4. Approval of November 18, 2002 Meeting Minutes

**SHARI ASPLUND MOVED AND JOAN CHANG SECONDED
THE MOTION TO APPROVE THE NOVEMBER 18, 2003
MINUTES AS AMENDED.
MOTION PASSED UNANIMOUSLY**

5. Administrative Business – (Discussion/Action)

a. Implementation of SB 1951, Chapter 714, Business & Professions Code Sections 4934.1 & 4934.2

1. Business and Professions Code Section 4934.1 – Study and Evaluation Requirements of the Little Hoover Commission

a. Little Hoover Commission's Executive Director, Jim Mayer

Jim Mayer, Little Hoover Commission's Executive Director gave a brief review of the makeup and membership of the Commission. The Commission is a bipartisan board composed of five citizen members appointed by the Governor, four members appointed by the Legislature, two Senators and two Assembly members. The Commission's mission is to investigate state government operations and through reports recommendations and legislative proposals to promote efficiency, economy and improve service. The full Commission selects study topics that come to its attention from citizens, legislators and other sources and has a statutory obligation to review and make recommendations on proposed government reorganization plans. Mr. Mayer indicated that the Commission's role is to explore how

programs could and should function in today's world. The Commission produces in-depth, well-documented reports that serve as a factual basis for crafting effective reform legislation and follows through with legislation to implement its recommendations. Mr. Mayer reported that SB 1951 mandates the Commission to do a specific process and form a recommendation that will be forwarded to the Governor and Legislature by September 4, 2004. This would be a document that would put this in context of where the Acupuncture field is, what the consumers are looking for, what they are getting and any other issue that are presented to the Commission. Mr. Mayer in closing, stated that the Board and staff have been very cooperative working with the Commission and he suggests if the Board has any advice or suggestions in this process, it would be appreciated. In addition the Commission anticipates a hearing scheduled for June 26, 2003 and August 28, 2003.

b. Four Areas for Little Hoover Commission to Study and Evaluate

Ms. Zhong-Fong reported that the Board has four areas for the Little Hoover Commission to study and evaluate and gave a brief background on each issue.

1. Scope of Practice

Ms. Zhong-Fong stated that the Board has identified two areas that needed updating. 1) The Legal opinion (on SOP) first issued in 1993 and 2) the disciplinary guidelines. Relating to the SOP, the Legal opinion stated that the Acupuncturist does have the legal authority to order lab tests and X-rays in order to assist in patient care. However, this needs to be clarified. Ms. Hartsough stated that the issue of reviewing the disciplinary guidelines was discussed at a previous Board meeting and will be reviewed by staff for updates and changes to be presented to the Board. Legal counsel stated it was an oversight to have not included the Legal Opinion into the Acupuncture Practice Act. Ms. Hartsough reported that Don Newbold, counsel for the Department of Health Services, requested to review the information that would allow acupuncturists to be a primary contact as opposed to having a referral from a medical doctor. She put together the documents of Legislative intent with regards to the Board's initial Practice Act. This information with Health Services is under review at this time. Ms. Zhong-Fong also stated that the use of ICD9 codes, discussed last year during the task force, and which will be in the new curriculum proposal, is also not clearly described in the SOP.

Public Comment: Deke Kendall, National Guild of Acupuncture and Oriental Medicine, stated that an acupuncturist is recognized as a primary health care provider and not having diagnosis defined in the Practice Act is a very serious issue of concern. Ms. Hartsough indicated, when the acupuncture profession was released from having to have a referral from a medical doctor to treat patients, at that time reference to diagnosis was not included in the law based on the legal counsel's opinion that they could diagnose. This is the reason that the Department of Health Services does not recognize the Acupuncture profession is authorized to order lab test and X-rays. Mr. Kendall stated that he had concerns that the public did not have access to X-rays and lab tests through their acupuncturist. Mr. Chang stated that acupuncturists can do lab tests, but some facilities do not recognize that acupuncturists have the authority. At this time the Board is addressing and clarifying this issue with Department of Health Services. Brian Fennen, CAOMA, stated that this is similar to Medicare and they do not recognize the Acupuncture profession as a health care provider and this clearly needs to be addressed.

2. Educational Requirements

Ms. Asplund reported that the Board has been talking about increasing and improving the education standards since the early 1990's. Historically California has led the nation in setting the standards in licensing, education and enforcement for the profession due to the fact that California has more acupuncturists than any other state. The last time education standards increased was 1985 (2,348 hours). Since then many things have changed. For example, an increased demand for acupuncturists with the capabilities to have a basic

understanding to interact with other health care professions and to better serve the patient. This has always been the goal of the Board, to provide the consumer with the most competent and qualified acupuncturists. Ms. Asplund indicated that it is the Board's goal to increase the education standards to be commensurate with the demands that are being placed upon the profession.

Public Comment: Michelle Lau, President of CAOMA, stated that CAOMA was in support of development of a professional doctorate as entry level to profession.

3. Use of National Examination

Ms. Nielsen reported when Dr. Hertz was the manager of OER, the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) exam was looked at as a possible substitute or a component of the state exam. The Board observed the NCCAOM process and found that there were two concerns, first, the pre-graduate eligibility, a student in their second year can take the NCCAOM exam with a high passing rate. Second, the cost of NCCAOM verses California Board exam. Ms. Nielsen stated at the November 28, 2002 Board meeting Christina Herlihy, CEO of NCCAOM and Tracy Ferrel, Manager at OER were invited to address the issue of NCCAOM verses the State exam and the exam process with the Board members. Ms. Nielsen indicated that Little Hoover Commission would be doing a neutral study and audit of the exams with information provided by both OER and NCCAOM. Ms. Zhong-Fong expressed her concerns for the issue of comparable hours, content, cost and knowledge between the two exams for the protection of the consumer. Ms. Asplund indicated that the NCCAOM is a certification exam not a licensing exam. The California exam is based on the occupational analysis for practice in California, which best serves the California consumer. This also assures an acupuncturist is learning and tested on what is required in California. Ms. Asplund stated that this is better for California, rather than the NCCAOM exam. Ms. Chang stated that the educational hours are so different across the country compared to the California hours and that her concerns were for the educational standards which may not be at the level of California's exam, in addition to the higher cost of the exams for the students.

Public Comment: Michelle Lau, President of CAOMA, indicated the most important issue is after passing the NCCAOM exams can the candidate be capable to present themselves as a primary provider, not the cost of the exams. The candidates are required to be qualified through the three-year program of education and clinical training before they may take the exam and the NCCAOM does not qualify candidates at the same level of educational standards as California. Ms. Lau states the NCCAOM exams could compare their exam with the California exam and if comparable could then be considered and the schools and profession needs to work together to promote the protection of the public and consumer. Lixin Huang, President of American College of Traditional Chinese Medicine (ACTCM), indicated that she was attending this meeting to present the schools point of view regarding the issue of California verses NCCAOM exams. She states, many students take the NCCAOM exam every year and 20 percent come from out of state. The national exam is recognized by more than 40 states, which allows the students to move to other states to practice. The students may take the national exam early in their education, but they can not receive a certificate or practice until they have completed the educational programs and student must be required to be qualified through Accreditation Commission for Acupuncture & Oriental Medicine (ACAOM) approved schools. Ms. Huang states that NCCAOM is currently developing an Oriental medicine exam. Brian Fennen, CAOMA, commented on a letter from Ms. Herlihy of a misunderstanding of the development of the Oriental medicine exam by NCCAOM, which they state it is currently under development. Mr. Fennen stated the three components to the national exam are entry level and because they are entry level the questions are duplicated. This is totally different than any other profession; all exams are done sequentially, taking one, then two, and building upon each other. NCCAOM splits up the modalities as entry level but

they still have to have the education to qualify for each exam. With the California exam there is an advantage of a fully integrated exam. Mr. Fennen stated that NCCAOM and ACAOM Requirements are put into statutes and regulations from other states, but had concerns for NCCAOM exams testing certain criteria. Mr. Fennen had concerns for NCCAOM and their process of certification and believes a thorough audit would prove it. Tom Haines, Pacific College, stated that California has this exam because of the uniqueness of the profession and believes that both California and the nationals can be combined, develop and monitor the exams, this would save time and funding. Ms. Zhong-Fong questioned why the nationals divided the three exams. Ms. Lau stated that the exams are based on certain criteria and the needs of the candidates. Mr. Haines stated that he is on the Board of the National Alliance organization that also has acupuncturists on the board. He said states have varying criteria from the East Coast to the West Coast. Mr. Haines indicated that California has 40% of the nation's acupuncturists and believes that if the exams are sequential, with primary care emphasis, and if NCCAOM considers what California has to say about what the profession needs, that this would benefit the country and California. Lixin Huang, President of ACTCM, states there is a historical reason for the States division of acupuncture and oriental medicine. Twenty-five years ago the West Coast had Traditional Chinese Medicine or Oriental Medicine as a base of training, licensing and practicing. The East Coast developed their curriculum from elements and acupuncture practicing, this was the base of the division. However, NCCAOM could combine the exams instead of separating the categories because more programs have added herbal medicine to their curriculum. Ms. Huang indicates that California licensed acupuncturists are required to have herbal medicine training, and believes practicing without the training provides no protection to the consumer or practitioner. This issue needs to be addressed. Deke Kendall, National Guild of Acupuncture and Oriental Medicine, stated that the European and British have a different orientation about acupuncture than California which is part of the Pacific Rim culture in terms of Oriental medicine. Oriental medicine is a complete medical system and can not be fractionated in various modalities. Mr. Kendall believes that the national should adopt the California exam based on validity of the exam and quality of the questions on the exam. Ms. Zhong-Fong indicated that she had concerns for the national's 1,350 education hours and how well NCCAOM ensures this knowledge? Ms. Huang stated that the curriculum is divided and requires certain numbers of hours be completed by a candidate from an ACAOM approved school, which has met all the requirements for the exams. Mr. Fennen commented that the pass rate for a California student that takes the NCCAOM exam is 10% above the national average. This demonstrates that this is an integrated program and exhibits that the students from a California approved school perform better because of the Acupuncture Board's standards.

**SHARI ASPLUND MOVED AND JOAN CHANG
SECONDED THAT THE ACUPUNCTURE BOARD
SUPPORT RETAINING THE CALIFORNIA
ACUPUNCTURE LICENSING EXAM AS ENTRY
REQUIREMENT INTO THE PROFESSION IN
CALIFORNIA AT THIS TIME.
MOTION PASSED UNANIMOUSLY**

Ms. Nielsen indicated the staff is in the process of surveying other states to assess whether they do or do not accept reciprocity of a California license as a prerequisite to their licenses. She stated the Board sends out a large number of certification letters for applicants that request licensing in other states. Ms. Nielsen commented at the November 18, 2002 Board meeting Ms. Herlihy attended to discuss NCCAOM exams and that there were many students in the audience that supported the California exam over the national. She suggests that the

Board begin a survey among the students of their opinion of the two exams and submit the findings to the Little Hoover Commission. Ms. Chang questioned why California does not have a clinical component. Ms. Lau stated that there is support of a clinical examination being brought back. Mr. Haines stated that there are problems with clinical exams, they are not reliable and subjective.

4. School Approval Process

Ms. Zhong-Fong reported that the Board is mandated to approve acupuncture schools for their graduates to qualify to sit for the California licensing exam. Before the school can operate, they must be approved by BPPVE and after one year the school may submit an application to the Board for approval. There are three accreditation processes: Accreditation Commission for Acupuncture & Oriental Medicine (ACAOM), Western Association of Schools and Colleges (WASC), and a new agency National Oriental Medicine Accreditation Agency (NOMAA). Those three agencies have different standards and costs. For those schools whose graduates want to sit for the California exam, the Acupuncture Board's approval is required. Ms. Zhong-Fong had concerns for the Board's responsibilities and duplicated processes and the additional cost for these approvals.

Public Comment: Deke Kendall, National Guild of Acupuncture and Oriental Medicine, stated he was on the AAOM Board when they set up the ACOAM agency. Before this was established the schools voluntarily increased their educational hours over the state requirements and other professional medical schools did similar increases with doctoral programs. In the original program there were over one hundred hours and ACOAM sought academic tracking with a masters degree. The profession was unhappy and battled to improve the standards. Mr. Kendall stated this never happened so the NOMAA was formed. This agency is based on the science of Chinese Medicine, curriculum, the study of existing state requirements and schools including detailed programs in China. Mr. Kendall reported the results of the recent survey that forty-five percent of graduates feel they are not prepared for clinical practice. And that seventy seven percent of the graduates need additional training to be able to practice. He believes the graduates need to have the confidence to practice. Tom Haines, Pacific College (PCOM), explained PCOM's approval process for their programs and agrees that there is a need for improving the accreditation standards within the process. Ms. Zhong-Fong stated the Board believes the three accrediting agencies do not meet all levels of standards that are required by the Board, and that the Board agrees they should have the responsibility to improve the quality and standards. Deke Kendall stated that the United State Secretary of Education only recognizes accreditation agencies. Lixing Wang stated she appreciated the Board recognizing schools from local and out of state and asked how would the Board assure the educational institutions provide the required level of education programs? Ms. Wang commented the Bureau for Private Postsecondary & Vocational Education (BPPVE), Acupuncture Board, ACOAM and WASC are being utilized in this process and recognized by other states and Department of Education (DOE). She states that the institutions must have clear criteria for approval and that collaboration between the agencies must have a well-established history with accountability and accreditation. Tom Haines stated the California legislature has designated BPPVE as the authority for educational institutions that are starting up. Mr. Haines suggested the Board accept the national accreditation standards, regional and ACAOM and any other sources recognized by the DOE, and coordinate with BPPVE. This would benefit the Board in avoiding duplication of the process. Brian Fennen, CAOMA, stated the agencies are private and voluntary, until the state adopts a law to make it mandatory. The advantage of being an accredited school by an agency recognized by DOE is, this institute qualifies for subsidized loans and grants. Mr. Fennen reports that all health care professionals, except for Chiropractic and Naturopathic, require the institute that their programs are operated at to be a regional accredited institution and this would be WASC. He suggests the Board do research to verify these issues.

c. Review List of Proposed Documents to Submit to Little Hoover Commission

The Board reviewed and approved the list of proposed documents for each of the issues to be reviewed by Little Hoover Commission. Submission to Little Hoover Commission will occur by May 2003.

2. Business and Professions Code Section 4934.2 – Study and Evaluation Requirements of the Acupuncture Board

a. Comprehensive Study of Unlicensed Acupuncture Assistants

Ms. Zhong-Fong opened the discussion whether the Board needs to identify the need, the duties and the education of the acupuncture assistant. Legal counsel suggested to survey other states where implementing such programs this may answer some of their concerns.

Public Comment: Tom Haines, PCOM, indicated that the students would have the opportunity to decide if this is their chosen profession, this would allow them to gain experience and professional clinical knowledge. Mr. Haines suggested a certification program would benefit both profession and consumers. Ms. Asplund agreed with Mr. Haines, however questioned if it was realistic for the schools to participate in a certification program? Legal counsel, Mr. Chang stated the schools would have to be based on statutory exemptions to be valid and then proceed through legislative requirements. Mr. Fennen indicated many acupuncturists are using and training acupuncture assistants, which are similar to other professions, however, the students may practice under their supervision of the schools exemptions. Mr. Fennen indicated this issue must be specific. Ms. Asplund stated the results of the survey previously performed by the Board reflected there is a need for the use of acupuncture assistants and the Board should further evaluate and make recommendations.

**PEI-LI ZHONG-FONG MOVED AND MIN CHANG
SECONDED THE REVIEW AND EVALUATION ABOUT
THE USE OF ASSISTANTS BE REFERRED TO A
SUBCOMMITTEE OF PEI-LI ZHONG-FONG AND
SHARI ASPLUND TO EVALUATE AND BRING A
RECOMMENDATION BACK TO THE BOARD.
MOTION PASSED UNANIMOUSLY**

b. CE Auditing and Consistency and Relevancy of Approved Courses

Ms. Zhong-Fong reported that the Board is in the process of performing the continuing education (CE) audit, the results of which will be evaluated for a six-month period and reported back to the Board. Ms. Wedge stated that the letters were sent out and the Board has been receiving responses. Ms. Wedge gave a brief summary of the how the process of selection is done. She selects ten individuals each month from the renewal notices and sends out a letter. When the licensee responds, they must submit a certificate of completion for their CE's. Ms. Wedge reported that she compares the certificates date with the attendance records to verify that the licensees have completed their requirements. Mr. Tin indicated that the Dental Board has a similar process every two years.

Public Comment: Michelle Lau, CAOMA, suggested that the practitioner must have CE's and emphasizes they should be in clinical training and updated technology, which would benefit the consumer.

b. Title 16, California Code of Regulations, Amend Section 1399.415 (Implementation date of new curriculum standards), Add New Section 1399.435 (New Curriculum Standards), and Amend Section 1399.436 (Evaluation of Foreign Applicant Credentials).

The Board reviewed recommended amendments to California Code of Regulation, Section 1399.415, 1399.435 and 1399.436, in addition to the draft initial Statement of Reasons.

**SHARI ASPLUND MOVED AND MIN CHANG
SECONDED TO ADOPT THE PROPOSED
REGULATIONS AS AMENDED AND AUTHORIZED THE
EXECUTIVE OFFICER TO PROCEED WITH FILING OF
A REGULATORY NOTICE WITH OFFICE OF
ADMINISTRATIVE LAW AND SCHEDULE THE PUBLIC
HEARING TO BE HELD AT THE JULY 2003 BOARD
MEETING IN ARCADIA.
MOTION PASSED UNANIMOUSLY**

c. Budget Reports/Updates

Ms. Nielsen reported in a memo from Department of Finance (DOF) the proposed budget cuts would affect all boards of Department of Consumer Affairs (DCA). Twenty-five million dollars is targeted for loans from 10 board's fund reserves and one million from the Acupuncture Board's funds reserves. DOF has the legal authority to process these loans. This would challenge the Acupuncture 03-04 Budget Change Proposal (BCP) and may compromise the Board's chances of getting the Attorney General's BCP approved. To comply with the Governor's budget directives, the Board will continue to monitor expenditures to ensure the Board is staying within budget. Ms. Zhong-Fong suggested canceling the June 2003 Board meeting to comply with the budget directive and reschedule the meeting next fiscal year in July 2003.

6. Public Comment Period:

Brian Fennen, CAOMA, reported on the following legislation updates: SB 867 Burton-Workers' Compensation, disability evaluation was reintroduced and pending review and recommendations from the Little Hoover Commission. AB 573 Judy Chu, reintroduced the Asian Medicine Herbal Health Products certification by the Department of Health Sciences addressing herbs with possible contaminants imported from Asia and counter act the deceiving label that Prop. 65 require. SB 921 Kuehl, single payer health care coverage or Universal Health Care, the Board may want to support this. AB 621 Nakanishi, retired health care professionals, issuing a temporary special license and immunity from liability. SB 228 Alarcon, Workers Compensation, addresses the fee schedule. AB 1888 Keyhoe, massage therapy, bodywork registration. SB 77 Burton, healing arts Physical Therapy, good change to their scope of practice. SB 907, Burton, Naturopathic license, concerns for their scope of practice.

7. CLOSED SESSION: Pursuant to Government Code Section 11126 (c) (1) and (c)(3) to discuss/take action on examination administration and disciplinary actions.

8. Adjournment

The Acupuncture Board meeting was adjourned at approximately 4:45 p.m.

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(approved July 14, 2003)

ACUPUNCTURE BOARD MEETING MINUTES MARCH 12-13, 2003 Contractors State License Board SACRAMENTO, CA 95827

**Thursday, March 13, 2003
8:30 am - 5:00 pm**

MEMEBERS PRESENT

Pei Li Zhong-Fong, L.Ac., Chair
Shari Asplund, Vice Chair
Joan C. Chang, L.Ac.
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MEMBERS ABSENT

Michael Eng

GUEST LIST ON FILE

1. Call to Order and Establishment of a Quorum (P.Zhong-Fong, Chair)

Pei Li Zhong-Fong called the Acupuncture Board meeting to order at approximately 8:35 a.m., roll was taken and a quorum established.

2. Education Business - (Discussion/Action)

a. School Approval and Site Visit Report – Seattle Institute of Oriental Medicine, Seattle, Washington – Paul Karsten, L.Ac., President

Ms. Nielsen reported the Board conducted a school site visit in February 2003 with Lloyd Wright, L.Ac. as the licensed member of the site visit team. She gave a brief history of the institute and described the facility, programs, curriculum and clinic. The report submitted reflected the findings that the faculty and students are dedicated and committed to their education. The campus and programs have evidence of stability with quality academic structure. Ms. Nielsen reported the site visit team recommends the Board grant full approval to Seattle Institutes' Masters of Acupuncture and Oriental Medicine as they have met and exceeded the requirements of the California Acupuncture Board.

**SHARI ASPLUND MOVED AND JOAN CHANG SECONDED
TO GRANT FULL APPROVAL TO SEATTLE INSTITUTES'
MASTERS OF ACUPUNCTURE AND ORIENTAL MEDICINE
(M.Ac.O.M.) DEGREE PROGRAM.**

MOTION PASSED UNANIMOUSLY

b. National Oriental Medicine Accreditation Agency (NOMAA), Ted Priebe, L.Ac., President and Chief Executive Officer

The Board reviewed the information Mr. Priebe provided in the Board packets. Mr. Priebe reported NOMAA's mission is to provide accreditation for educational institutions that will offer entry-level, doctoral degree programs in Oriental Medicine (Acupuncture and Herbal Medicine) which are designed to prepare students for professional, independent and primary care practice within the scope of each state's scope of practice regulations. Mr. Priebe reports that NOMAA is preparing and intends to apply for recognition by the U.S. Secretary of Education. Once recognized NOMAA will become eligible to participate in Federal loan programs. Ms. Zhong-Fong asked Mr. Priebe what was the difference between ACAOM and WASC and the fees they require? Mr. Priebe stated that NOMAA had a doctorate program, their teaching approach aspect was through the philosophical teaching of Chinese medicine and their fees were consistent with the other agencies and comparable with WASC.

Public Comment: Michelle Lau, CAOMA, stated that CAOMA supports any agency that intends to develop a doctorate and entry-level profession. Ms. Lau reports that CAOMA is forming an advisory committee and inviting the schools and associations to participate to open communications and promote the process.

c. School Applications and Pending Site Visits

Ms. Nielsen gave a brief update on the pending site visits. Ms. Nielsen stated that she would be reviewing New England School of Acupuncture in Watertown, Massachusetts in April 2003. Stanton University, Garden Grove, California, and California Union University, Fullerton, California, are new applicants to be reviewed later.

d. Temporary Closure and Relocation of China International, (CIMU) Los Angeles, CA

Ms. Nielsen updated the Board on the relocation status of CIMU. They have secured a new location and a site visit will be scheduled to review the new site to determine if they are still compliant to retain the Acupuncture Board's approval.

e. Update on Closure of Meiji College, Berkeley, CA

Ms. Nielsen briefly reported on the closure of Meiji College and a recent letter stating the school has decided against pursuing a Teach-out plan with American College of Traditional Chinese Medicine (ACTCM) and plans keep the school open. Ms. Nielsen introduced Clairmarie Levin, Liaison Officer for the Advisory Committee at Meiji College and Yasuo Tanaka, Secretary of the Board of Directors. Ms. Levin explained the school's Board, faculty and students all supported a decision to continue the operation of the college. It will remain a stable educational environment with the intent for growth with the same faculty, location and curriculum. Ms. Levin indicated there would be new leadership on the Board and a new president, the name will change and a budget developed with projections of adequate financial resources to demonstrate stability of the school. Ms. Levin requested the Board consider permitting Meiji with thirty days to submit a detailed report to the Board. The Board directed Meiji College to submit a status report with support documents to the Board by April 11, 2003 or earlier.

f. Evaluation of Tutorial Program

Ms. Molinar gave a brief introduction of the tutorial programs and reviewed the statutory and regulatory requirements of the program, the application, list of current tutorial trainees/supervisors survey results to trainees and supervisors and exam pass/fail results.

Public Testimony from Current Tutorial Trainee:

- 1) **Andrew Klein** stated, without the tutorial program he would have not been able to pursue the profession because of his family obligations and geographical boundaries to the nearest educational facilities. The other benefits were the list of the qualified professional providers and utilizing their experience and knowledge. Mr. Klein indicated the program could be strengthened in certain areas: An increase in the fees would support a better administrative program. The curriculum requirements be reviewed and converted to self-study, online

courses or community college courses. Recommend a program developer who is an acupuncturist available to help guide students and supervisors through the process and program. The tutorial student does not receive the benefit as a student in school to be part of the test question discussion. Mr. Klein hopes the Board will consider to make recommendations from the testimony that has been presented and to continue to improve the program.

- 2) **Millie Bun** stated she had many benefits, one was as a fifth generation acupuncturist and licensed chiropractor. The tutorial program was convenient to her flexible schedule and her mother was her supervisor with forty years of experience. Ms. Bun indicated concerns she had for the tutorial program were the academic area, classroom environment, and supplemental information and exam preparation. Ms. Zhong-Fong suggested that the tutorial student should pass a comprehensive exam before taking the CALE.

Ms. Zhong-Fong asked Mr. Klein and Ms. Bun what was in an average day in the tutorial and clinical program for them and how would they prepare themselves for the exam. They stated their programs were scheduled around their work and family obligations. They studied at home independently without the benefit of the environment of group discussions or involvement. In addition, they took the national exam as a comprehensive exam. Mr. Klein suggests that a group could get together and create an exam to measure their progress. Ms. Bun stated that they apply what they have learned and the supervisor does assess their progress. Ms. Asplund stated that she would like to see the Education Committee get together with Ms. Nielsen and Ms. Molinar to discuss way to retain and improve the program to be a successful tutorial for the student and consumer.

Public Comment: Tom Haines, PCOM, indicated the he agreed with Ms. Asplund that there should be discussion to improve the program. Mr. Haines states that there are seven out of thirty three tutorial students not close to schools, which limits their training for certain types of patients. Having a link with the schools enforces the quality of the education, particularly the preparation for the exam.

Public Testimony from current Tutorial Supervisors:

- 1.) Michelle Fan, L.Ac., gave a brief history of the education she and her family have accomplished in the United States and China. Ms. Fan indicated during this time she applied for the tutorial program and stressed the importance of self-motivation and the hard work by the student and the commitment they must be prepared for to complete the program. She added after completing the program and passing the CALE in 1993, she felt encouraged later in her career to apply for the tutorial supervisor program.
- 2.) Michael McCulloch, California Association of Acupuncture Tutorials (CAAT) gave a brief history of CAAT and his educational background of his qualifications and degrees including as a tutorial-trained acupuncturist. Mr. McCulloch presented the mission of CAAT:

- Field inquiries and answer questions about tutorial education.
- Make introductions between interested students and teachers.
- Mentor students and teachers in other established tutorial programs.
- Assist tutorial program applicants in the application process.
- Assist tutorial students in licensing exam preparation.
- Work with Acupuncture Board to promote and improve tutorial education in the State of California.

Mr. McCulloch received his license 1-year after taking the 1986 exam. He said the pass rate for school and tutorial students was roughly equal (School students 39.2% passed and tutorial students 37.5% passed) by reference to the pass/fail results, allowing for the year of exam and taking into account how much variation is in the data, there is no evidence of any significant difference between the passing proportion of tutorial students and school students. Mr. McCulloch reports the development in tutorial programs is a growing movement across the

nation. His recommendations to the Board are the following: Authorize short between-program exchanges of students, to increase breadth of training. Authorize the creation of exam preparation proficiency seminars. Authorize CEU units for tutorial program graduates to hold focused, structured meetings for exchange of knowledge. Require four-year college degree for entering students. Require tutorial programs to administer their own exit exams prior to students taking the CALE. Mr. McCulloch closed his testimony by stating the students are the best judge of the quality and effectiveness of their own education. The best ideas in education will emerge from paying attention to the students: what they do, say and feel.

Public Comment: Jerone Jung, Dong-guk Royal University of America, stated he has concerns for the tutorial-passing rate and the qualifications of tutorial provider. Mr. Jung believes the teachers may be a good acupuncturist, but may not be a good teacher. Tom Haines, PCOM, states he disagrees with Mr. McCulloch's conclusions and believes they are misleading. He gave a brief explanation between the scoring and clinical evaluations. Brian Fennen, CAOMA, presented the Board with a summary from the CAOMA meeting for the Board to review. The statistics are from the first year examinees including the most recent examinees. Mr. Fennen stated the tutorial students have a great disadvantage to school students having an exam preparation classes and agrees it is an excellent idea to develop a tutorial prep group. Ms. Zhong-Fong indicated there is important information to collect and present to be reviewed by the Board.

g. Foreign Externships – Application Check-off List

The Board accepted the Foreign Externship program check-off list document that has been provided in the Board packet and directed staffs to commence use of the new list immediately.

Ms. Zhong-Fong stated the Board would re-schedule the next Board meeting for July 14, 2003 at the Arcadia City Hall in Arcadia. Arcadia City Managers office was contacted and the site and date have been reserved.

3. Enforcement Business – (Discussion/Action)

**a. Consumer Complaint Disclosure – James Goldstene, Executive Officer,
Board of Barbering and Cosmetology**

Mr. Goldstene from the Department of Consumer Affairs stated the Consumer Complaint Disclosure has not been updated or evaluated since 1979. He stated he was invited today to briefly provide the Board with information. The Disclosure Policy is being updated as Consumer groups wanted to improve the quality and the timely information on the licensees. The Department developed the "Recommended Minimum Standards for Consumer Complaint Disclosure" which was offered to the boards as a model for how to handle the disclosure of information that meets certain criteria.

Public Comment: Brian Fennen, CAOMA, Mr. Fennen indicated some of his questions and concerns have been answered, but would this provide enough information for the consumer to make good judgement.

**SHARI ASPLUND MOVED AND JOAN CHANG
SECONDED TO ADOPT REVISING CONSUMER
COMPLAINT DISCLOSURE POLICY "FROM" AT THE
TIME THE ACCUSATION IS FILED BY THE
ATTORNEY GENERAL'S OFFICE "TO" WHEN THE
SUPERVISING ATTORNEY GENERAL REVIEWS THE
CASE, ACCEPTS THE CASE AND ASSIGNS THE CASE
TO A DEPUTY ATTORNEY GENERAL AND DIRECTED
THE EXECUTIVE OFFICER TO PROMULGATE THE
NEW POLICY INTO REGULATIONS. THIS POLICY
WILL NOT GO INTO PLACE UNTIL THE PROPOSED
REGULATORY LANGUAGE COMES BEFORE THE
BOARD TO ADOPT.**

MOTION PASSED UNANIMOUSLY

b. Enforcement Case Report

Ms. Hartsough gave a brief update and report with the details of the current status of enforcement cases. The Board has received one hundred and seven new complaints since July 1, 2002, 27 percent from unprofessional conduct, 29 percent from unlicensed activity, 31 percent from criminal charges/convictions and 13 of the new complaints were forwarded to Department of Investigation (DOI) for formal investigation.

c. Northern California Enforcement Task Force Meeting

Ms. Nielsen indicated that at the September 25, 2002, Board meeting the members took action to direct staff to hold an Enforcement Task Force meeting in Northern California within 90 days. The meeting was scheduled for December 10, 2002, to be hosted by the Oakland Office of Attorney General. Invitations were distributed to all Bay Area law enforcement officers, prosecutors, business licensing and regulatory agencies. Ms. Nielsen reported that there were an insufficient number of responses and the meeting was cancelled. It does not seem to be an important issue with the law enforcement agencies in the San Francisco area.

d. Health Insurance Portability and Accountability Act (HIPAA) – Requirements and Impact on the Acupuncture Profession - Presentation/Discussion with Marilyn Allen, American Acupuncture Council

Ms. Allen reported health privacy has emerged as a prominent health care policy issue at the Federal level. The Privacy Rule does two things: it imposes new restrictions on how covered entities can use and share health information and it creates new rights for individuals concerning their own health information. This covers “protected health information” and must be “health information” and be individually identifiable and it must be created or received by a covered entity. Ms. Allen indicated as the health care industry moves forward, the HIPAA standards will likely be viewed as the benchmark relating to the privacy of patient records and the right of patients to access their medical information. This will also include the rights of patients to request an amendment to their records, and to request an accounting of the information and disclosures made by acupuncturists. Acupuncturist who comply with HIPAA will be able to use their compliance efforts to demonstrate good faith when approaching patients and the patient’s individual right to privacy. Ms. Allen stated that in the Board’s packets there are documents with the information implementing the Federal Health Privacy Rule in California and guidelines those are effective April 14, 2003. This information explains in detail the new State and Federal Laws for the Board’s review.

Pubic Comment: Brian Fennen, CAOMA, stated he wanted to thank Ms. Allen for her presentation and clarification of HIPAA as it was a great overview. There has been some misunderstanding with the new guidelines and the updated version is available and on line www.chcf.org. The Health Care Foundation found there are two separate levels of professions in California. Mr. Fennen indicates he has concerns for “who is covered” with issues regulating specific types of entities transferring or maintaining health information in electronic form. The other statement in the Privacy Rule reads when transmitting health information electronically the provider must use a computer, internet or private network system and sending information by fax is not considered transmitting electronically. Mr. Fennen stated most acupuncturists are not covered because they do not use an electronic system to transmit, however because acupuncturists are not covered under Medicare and he believe this should not be ignored. Due to the changes, Mr. Fennen suggests the profession obtain an updated version of both State and Federal Laws of the Federal Privacy Rule.

4. Examination Business (Discussion/Action)

a. January 22, 2003 Licensing Examination

Ms. Nielsen briefly reported on the January 2003 examination results and statistics by schools that is provided in the Board Packet. She indicated this was the first time the new exam plan based on the November 2001 Occupational Analysis was administered. It created concerns from some candidates, but overall it was very positive and performed well.

b. Release of Exam Results with Scores for Areas of Exam Plan

Ms. Nielsen explained several letters were submitted to the Board from students who expressed concern that they felt they were not prepared for the new exam plan and when they discussed it with the schools they were informed they did not receive the data from the Board. Ms. Nielsen indicated the schools in fact had this information for over a year and the Board will respond to the schools and/or set up meetings to discuss this issue.

Public Comment: Brian Fennen, CAOMA, suggested follow up on the survey from the schools asking them how they have implemented the results of the new occupational analysis in their program. This would provide the Board with an understanding of how to start a better communication dialog with the schools. Tom Haines, Pacific College, explained PCOM has put an electronic version of the occupational analysis together, and developed a work sheet to cover every aspect in the analysis and has made this available to other colleges.

5. Public Comment Period:

Brian Fennen, CAOMA, reported on the warnings of ephedrine verses ephedra as dietary supplements and stated the media has exaggerated the effects. Mr. Fennen indicated a sports celebrity died recently because of his possible use of ephedrine stated by the medical examiner, which was not confirmed and explained the person had a medical history and complications. Mr. Fennen indicated these products should be clearly labeled because they are mistaken for ephedra, which is an herb acupuncturist's use. At this time there are letters to ban or require manufacturers better labeling of their product and Mr. Fennen asked if the Board would think about taking a position on this issue.

6. Adjournment

The Acupuncture Board meeting was adjourned at approximately 3:05 p.m.